

REMARKS

Twenty-five claims were originally filed in the present Application. Claims 1-25 currently stand rejected. Claims 5, 7, 9, and 20 are amended herein. Reconsideration of the Application in view of the foregoing amendments and the following remarks is respectfully requested.

Priority Claims

In paragraphs 2 and 3 of the Office Action, the Examiner objects to Applicant's priority claim to three European patent applications filed on July 6, 1998, one U.S. provisional patent application No. 60/091,812 also filed on July 6, 1998, and one PCT patent application No. PCT/EP99/04538 filed on July 1, 1999. The Examiner states that Applicant's claims for priority cannot be based on these five applications because "the United States application was filed more than twelve months thereafter." Applicants respectfully traverse.

Applicant submits that there is an unbroken chain of priority extending from the four applications filed on July 6, 1998, through PCT application No. PCT/EP99/04538 filed on July 1, 1999, to the present application filed on January 1, 2001. Applicant therefore claims priority not under 35 U.S.C 119, as stated by the Examiner, but rather under 35 U.S.C. 120, 35 U.S.C. 363, and 35 U.S.C. 365(c).

More specifically, PCT application No. PCT/EP99/04538 was filed on July 1, 1999, within one year of the identical filing date (July 6, 1998) of provisional application No. 60/091,812 and the three European applications. PCT

application No. PCT/EP99/04538 affirmatively claimed priority in provisional application No. 60/091,812 and in the three European applications. PCT application No. PCT/EP99/04538 also expressly designated the United States for potential national filing. Furthermore, the present application 09/754,152 was filed on January 1, 2001, which is within the 30-month time limit for entering the national stage of PCT application No. PCT/EP99/04538.

35 U.S.C. 120 refers to applications filed “as provided by section 363 of this title.” In turn, 35 U.S.C. 363 states that “[a]n international application designating the United States shall have the effect . . . of a national application for patent regularly filed in the Patent and Trademark Office” In addition, 35 U.S.C. 365(c) states that “an international application designating the United States shall be entitled to the benefit of the filing date of a prior national application”

For at least the foregoing reasons, the Applicant submits that the present application No. 09/754,152 is fully entitled to the claimed priority filing date of July 6, 1998. The Applicant therefore respectfully requests the Examiner to expressly withdraw the objections found in paragraphs 2 and 3 of the current Office Action regarding Applicant’s priority claims.

Drawings

In paragraph 5 of the Office Action, the Examiner objects to the drawings because of a discrepancy between Figure 1 and page 10 of the Specification with regard to the total receive capacity of Node C 3. In response, the Applicant herein amends pages 9-10 of the Specification to resolve the foregoing discrepancy. The Applicant therefore respectfully requests the Examiner to withdraw the objection in paragraph 5 of the Office Action.

In paragraph 6 of the Office Action, the Examiner objects to the drawings because Figures 3 and 9 include reference characters that are not mentioned in the specification. In response, the Applicant herein amends page 15 and page 31 of the Specification to include the missing reference characters. The Applicant therefore respectfully requests the Examiner to withdraw the objections in paragraph 6 of the Office Action.

In paragraph 7 of the Office Action, the Examiner objects to the drawings because certain reference characters referred to in the Specification are not shown in Figures 4 and 5(c). In response, the Applicant herein amends page 15 of the Specification to remove the reference character that is not shown in FIG. 4. In addition, the Applicant herein amends Figure 5(c) to include the missing reference character by changing a duplicate reference character "C28" into the missing reference character "C30". For at least the foregoing reasons, the Applicant therefore respectfully requests the Examiner to withdraw the objections in paragraph 7 of the Office Action.

Rejections under 35 U.S.C. §112, Second Paragraph

In paragraphs 9-12 of the Office Action, the Examiner indicates that claims 5, 7, 9, and 20 are rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In response, the Applicant herein amends claims 5, 7, 9, and 20 to remedy the Examiner's various concerns regarding these rejected claims. In view of the foregoing amendments, Applicant believes that the Examiner's rejections are addressed, and respectfully requests that the rejections under 35 U.S.C. §112, second paragraph, be withdrawn so that claims 5, 7, 9, and 20 may issue in a timely manner.

35 U.S.C. § 102(e)

In paragraph 14 of the Office Action, the Examiner rejects claims 1-25 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,252,886 to Schwager et al. (hereafter '886'). The Applicant respectfully traverses the rejections of claims 1-25 for at least the following reasons.

The Examiner states that "[b]ased upon the earlier effective U.S. filing date of the reference, it constitutes prior art" However, Applicant submits that '886 does not have an earlier effective filing date than the present application. In fact, the earliest priority claims made in '886 are identical to the earliest priority claims made in the present application no. 09/754,152.

In other words, as discussed above in conjunction with Applicant's priority claims, both '886 and the present application no. 09/754,152 have effective


priority dates of July 6, 1998 based upon U.S. provisional application No. 60/091,812 and the three European applications discussed previously. Therefore, the cited '886' reference does not constitute "prior art" under 35 U.S.C. 102 with respect to the present application. For at least the foregoing reasons, the Applicant requests the Examiner to withdraw the rejections of claims 1-25 as being anticipated by '886'. Reconsideration and allowance of claims 1-25 are respectfully requested so that the present application may issue in a timely manner.

Summary

The Applicant submits that the foregoing amendments and remarks overcome the Examiner's objections and rejections. The Applicant therefore submits that the claimed invention is patentable over the cited art, and respectfully requests the Examiner to allow claims 1-25 so that the present Application may issue in a timely manner. If there are any questions concerning this amendment, the Examiner is invited to contact the Applicant's undersigned representative at the number provided below.

Respectfully submitted,

Date: 10/20/04

By: 
Gregory J. Koerner, Reg. No. 38,519
SIMON & KOERNER LLP
10052 Pasadena Avenue, Suite B
Cupertino, CA 95014
(408) 873-3943